

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

DECISION AND ORDER
11-CR-121-A

NELSON PACHECO,

Defendant.

This case was referred to Magistrate Judge H. Kenneth Schroeder, Jr., pursuant to 28 U.S.C. § 636(b)(1) for supervision of all pretrial proceedings. On January 17, 2012, defendant Nelson Pacheco filed a motion seeking suppression of physical evidence seized from 29 Hammerschmidt Street, Buffalo, New York. (Dkt. No. 50). The United States responded, (Dkt. No. 70), and Magistrate Judge Schroeder heard oral argument of the motion on April 14, 2012. On October 18, 2012, Magistrate Judge Schroeder issued a Report and Recommendation recommending that defendant's motion to suppress be denied. (Dkt. No. 115).

On November 9, 2012, defendant Pacheco filed objections to the Magistrate Judge's Report and Recommendation. (Dkt. Nos. 118, 129). The government responded. (Dkt. No. 124). During oral argument of the objections, the Court directed the parties to submit supplemental briefing of issues addressed in *United States v. Clark*, 638 F.3d 89 (2d Cir. 2011). After those filings (Dkt. Nos. 131, 132), the Court heard additional oral argument March 14, 2013.

Pursuant to 28 U.S.C. § 636(b)(1), and after *de novo* review, the Court adopted the Report and Recommendation to which objections have been made. Upon *de novo* review and after reviewing the submissions of the parties and hearing oral argument, the Court adopted Magistrate Judge Schroeder's Report and Recommendation, (Dkt. No. 115), on April 19, 2013.

Defendant Pacheco filed a motion for reconsideration, and for a *Franks* hearing, on July 25, 2013. (Dkt. No. 145.) The United States responded (Dkt. No. 149), but before oral argument was completed, defendant filed a motion to suppress evidence from some previously-seized cell phones. (Dkt. Nos. 155, 158-59, 160). The United States responded to the motion to suppress the cell phone evidence, (Dkt. No. 157), and defendant then further moved to dismiss the Indictment and to suppress. (Doc. No. 162). The matters were recommitted to Magistrate Judge Schroeder, and, after the United States responded, (Dkt. Nos. 166, 168), the Magistrate Judge held a suppression hearing, took post-hearing submissions (Dkt. Nos. 174-75) and issued another Report and Recommendation. (Dkt. No. 188). Defendant filed objections to this Report and Recommendation (Dkt. No. 197), the United States responded (Dkt. No. 198), and the Court heard oral argument. Defendant Pacheco submitted *pro se* objections thereafter seeking additional proceedings, which were docketed, but defendant's counsel made no further submissions.

The Court has carefully reviewed the Report and Recommendation (Dkt. No. 188), the objections and pleadings submitted by the parties. Pursuant to 28 U.S.C. §

636(b)(1), and after *de novo* review, the Court adopts Magistrate Judge Schroeder's Report and Recommendation (Dkt. No 188). For the reasons set forth in Magistrate Judge Schroeder's Report and Recommendation, defendant's motions to dismiss, to suppress evidence, and for a *Franks* hearing are denied.

In addition, defendant Pacheco's earlier motion to reconsider is granted, see *Shrader v. CSX Transp., Inc.*, 70 F.3d 255, 256–57 (2d Cir. 1995), and after due consideration, the Court renews its decision adopting the reasoning in Magistrate Judge Schroeder's Report and Recommendation, (Dkt. No. 115), denying defendant's earlier dispositive motions. (Dkt. No. 141).

The parties shall appear before this Court on May 28, 2015 at 12:00 p.m. to set a trial date.

SO ORDERED.

Richard J. Arcara
HONORABLE RICHARD J. ARCARA
UNITED STATES DISTRICT COURT

Dated: May 27, 2015